



September 27, 2000

Mr. Mark Flowers
Assistant City Attorney
City Of Midland
300 North Loraine, Room 320
P. O. Box 1152
Midland, Texas 79702-1152

OR2000-3713

Dear Mr. Flowers:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 139409.

The City of Midland Police Department (the "department") received a request for all information relating to a hit and run accident. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

We first note that the submitted information includes a peace officer's accident report that appears to have been prepared pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Access to an accident report is governed by law outside the Public Information Act. The Seventy-fourth Legislature amended section 47 of article 6701d, Vernon's Texas Civil Statutes, to provide for the release of an accident report to a person who provides two of the following three items of information: (1) the date of the accident, (2) the name of any person involved in the accident, and (3) the specific location of the accident. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Gen. Laws 4413, 4414. In other legislation, the Seventy-fourth Legislature also repealed and codified article 6701d as section 550.065 of the Transportation Code without substantive change. *See* Act of May 1, 1995, 74th Leg., R.S., ch. 165, §§ 24, 25, 1995 Tex.

Gen. Laws 1025, 1870-71.¹ In section 13 of Senate Bill No. 1069, the Seventy-fifth Legislature amended section 550.065 of the Transportation Code to provide for release of accident reports under specific circumstances. *See* Act of May 29, 1997, 75th Leg., R.S., ch. 1187, § 13, 1997 Tex. Gen. Laws 4575, 4582-83 (current version at Transp. Code § 550.065). That same legislation also repealed section 47 of article 6701d, V.T.C.S. *See id.*, § 16(b), 1997 Tex. Gen. Laws 4575, 4583. However, a Travis County district court has issued a permanent injunction precluding the enforcement of the amendment of section 550.065 of the Transportation Code that was enacted by section 13 of Senate Bill No. 1069. *See Texas Daily Newspaper Ass'n. v. Cornyn*, No. 97-08930 (345th Dist. Ct., Travis County, Tex., April 26, 2000). The district court has determined that the law in effect prior to the passage of Senate Bill No. 1069 now governs and remains unaffected by the permanent injunction. The law in effect prior to the passage of Senate Bill No. 1069 was section 47 of article 6701d, V.T.C.S.²

Subsection (a) of section 47 provides that “[e]xcept as provided by Subsection (b) of this section, all accident reports . . . [are] privileged and for the confidential use of the Department [of Public Safety] and agencies . . . having use for the records for accident prevention purposes.” V.T.C.S. art. 6701d, § 47(a). Subsection (b) of section 47 provides in relevant part:

¹Because the repeal of a statute by a code does not affect an amendment of that statute by the same legislature that enacted the code, the amendment of section 47 of article 6701d, V.T.C.S., is preserved and given effect as part of the code provision. *See* Gov’t Code § 311.031(c).

²A separate act of the Seventy-fifth Legislature also amended section 550.065 of the Transportation Code to conform to section 47 of article 6701d, as amended by the Seventy-fourth Legislature, and repealed article 6701d. *See* Act of May 8, 1997, 75th Leg., R.S., ch. 165, § 30.125, 1997 Tex. Gen. Laws 327, 648-49 (enacting Senate Bill No. 898). Although the Seventy-fifth Legislature enacted Senate Bill No. 898 prior to the passage of Senate Bill No. 1069, Senate Bill No. 898 was not made effective until September 1, 1997. *See id.*, § 33.01, 1997 Tex. Gen. Laws 327, 712. Further, Senate Bill No. 1069 expressly provides that to the extent of any conflict, Senate Bill No. 1069 prevails over another act of the Seventy-fifth Legislature. *See* Act of May 29, 1997, 75th Leg., R.S., ch. 1187, § 16(c), 1997 Tex. Gen. Laws 4575, 4583. If irreconcilable amendments are enacted by the same session of the same legislature, the latest in time prevails. *See* Gov’t Code § 311.025(b). Thus, because Senate Bill No. 898 never became effective, and later amendments prevail, we conclude that section 47 of article 6701d, V.T.C.S., was the law in effect prior to the passage of Senate Bill No. 1069 regarding the availability of accident report information, rather than section 550.065 of the Transportation Code as amended by Senate Bill No. 898.

(1) The Department or a law enforcement agency employing a peace officer who made an accident report is required to release a copy of the report on request to:

...

(D) a person who provides the Department or the law enforcement agency with two or more of the following:

- (i) the date of the accident;
- (ii) the name of any person involved in the accident; or
- (iii) the specific location of the accident[.]

V.T.C.S. art. 6701d, § 47(b)(1)(D); *see* Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Gen. Laws 4413.³ Thus, subsection (b) of section 47 provides that a peace officer's accident report is subject to release only by the Department of Public Safety or "a law enforcement agency employing a peace officer who made an accident report[.]" Otherwise, section 47(a) makes an accident report confidential. In this case, the accident report was prepared by an officer of the department. The requestor has provided the department with all three items of information specified by section 47(b)(1)(D). Therefore, the department must release the accident report in its entirety.

You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation or criminal prosecution that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). You state that the requested information pertains to a case that did not result in a conviction or deferred adjudication. We therefore assume that the criminal investigation has concluded and that there is no pending prosecution of this matter. Given that assumption, we agree that section 552.108(a)(2) is applicable in this instance. However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. --Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); *see also* Open Records Decision No. 127 (1976) (summarizing the types of information that is considered to be basic front page information). Thus, with the exception of the basic front page information, we conclude that you may withhold the remaining requested information pursuant to section 552.108(a)(2) of the Government Code.

³We note that the text of amended section 47 of article 6701d, V.T.C.S., is not found either in the Vernon's Revised Civil Statutes or in the Transportation Code. It is published, however, in the 1995 General and Special Laws of the Seventy-fourth Legislature at chapter 894, section 1.

You also claim that the submitted records contain information that is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 governs the release and use of motor vehicle record information and provides in relevant part:

(a) Information is excepted from [required public disclosure] if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;

(2) a motor vehicle title or registration issued by an agency of this state; or

(3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a). Thus, in releasing basic information, the department must withhold information relating to a motor vehicle record in accordance with section 552.130. In summary, the department must release the entire, unredacted, peace officer's accident report. The department must also release basic information that is not required to be withheld under section 552.130. The department may withhold the remaining information under section 552.108(a)(2).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental

body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/pr

Ref: ID# 139409

Encl. Submitted documents

cc: Ms. Julie Blackburn
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(w/o enclosures)